

**Response Under 37 CFR 1.116**

**Expedited Procedure**

**Examining Group 3700**

Application No. 09/937,238

Paper Dated: August 25, 2003

In Reply to USPTO Correspondence of May 23, 2003

Attorney Docket No. 0702-011472

**REMARKS**

The Office Action of May 23, 2003 has been reviewed and the Examiner's comments carefully considered. A present amendment modifies claims 12-14, 20 and 21 in accordance with the originally-filed specification. Claims 12-21 remain in this application.

The Examiner is thanked for the courtesies extended to Nathan Prepelka in an interview on July 16, 2003. In the course of that interview, the Examiner continued to maintain his rejection of the independent claims in view of the prior art of record. However, the Examiner also indicated that independent claims 12, 20 and 21 could be amended to better define over the cited prior art. This has been accomplished through the foregoing amendment.

Initially, the Examiner objected to the disclosure indicating that the detailed description of Figs. 3 and 4 appeared to contradict the brief description of drawings. Specifically, the Examiner believes that, while in the Brief Description of the Drawings section of the specification, Figs. 3 and 4 are described as "Prior Art"; and in the Detailed Description section of the specification, Figs. 3 and 4 are referred to as packages "according to the invention." The specification has been modified to overcome this objection, since the embodiments shown in Figs. 3 and 4 are, indeed, prior art and not part of the present invention. Withdrawal of this objection is respectfully requested.

The Examiner has rejected all of pending claims 12-21. Specifically, claims 12-21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,734,388 to Hopkins. Further, claims 12-21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by the admitted prior art, namely, the embodiments shown in Figs. 1-4 and {W0074911.1}

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7-10 of the present application. In view of the following remarks and the foregoing amendments, Applicant respectfully requests reconsideration of these rejections.

Independent claim 12 of the present application, as amended, is directed to a package of flexible material which has been formed into an envelope. The package includes an access opening that is closed by means of a seal formed by bonding together two or more contacting layers of the material in a particular area. The package can be opened by pulling apart the two bonded-together layers of material in the area, and the flexible material includes an engagement portion. The engagement portion is positioned in the part of the package configured to envelop the packaged product. Further, the seal extends the width of the package and is directed inwardly and downwardly toward the engagement portion and the bottom of the package, such that a central portion of the edge of the seal is immediately adjacent the engagement portion.

Independent claim 20, as amended, is directed to a method for producing a package of flexible material where two or more contacting layers of the material are bonded together in a particular area. The package can be opened by pulling apart two bonded layers of material in the area by engaging the flexible material at the location of an engagement portion. The engagement portion is positioned on the part of the package configured to envelop the packaged product. In addition, the seal extends the width of the package and is directed inwardly and downwardly toward the engagement portion and a bottom of the package, such that a central portion of the edge of the seal is immediately adjacent the engagement portion.

Independent claim 21 of the present application, as amended, is directed to a method for packaging a product, where the product is enveloped with a flexible material. Two or more contacting layers of the material are bonded together in a particular area in such a manner that the package can be opened by pulling apart the two bonded layers of material in the area by engaging the flexible material at the location of the engagement portion. The engagement portion is positioned in the part of the package that envelops the packaged product. Further, the seal extends the width of the package and is directed inwardly and downwardly toward the engagement portion and a bottom of the package, such that a central portion of the edge of the seal is immediately adjacent the engagement portion.

Figs. 3, 4 and 7-10 of the present application represent prior art. The embodiments of these figures include a container 1 with a bottom 2, four upright walls 3 and a seal 4. Layers of flexible material extend beyond the seal 4 and form "flaps" 7. These flaps 7 function as an engagement area for opening the package, which is accomplished by engaging the flaps 7 with the fingers and pulling in the direction of arrows 5 and 6. In addition, the embodiment shown in Fig. 4 illustrates flaps 7 that are made of a continuous strip, which extends beyond the seal 4. Further, all of Figs. 7-10 show embodiments of the container 1 and also include these flaps 7. All of the containers 1 in Figs. 3, 4 and 7-10 include both the flaps 7 and, further, the seal 4 has a convex-shaped edge that is directed outwardly or toward the top or flaps 7 of the package. Therefore, the seal 4 illustrated in all of Figs. 3, 4 and 7-10 "point" toward or are directed toward the top of the package (the flaps 7).

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The Hopkins patent is directed to an opening means for a tetrahedral container. As best seen in Fig. 1, the container 10 has two sealed ends 12 and 14 and a longitudinal seam 16. Sealed end 14 has a convex and angular (or V-shaped) shape. Also, as seen in Figs. 1, 2 and 6-8, the flaps near longitudinal seam 16 have varied shapes. In addition, as seen in Fig. 7, the sealed end can also assume an arcuate or curve shape. As with the embodiments of Figs. 3, 4 and 7-10 of the admitted prior art, all of the embodiments of the container 10 of the Hopkins patent include extending or projecting flaps, noted as region 18, that extend beyond the seal 14. In addition, the seal 14 is outwardly convex in shape, meaning that the seal 14 "points" toward the flap 16.

In the final Office Action, the Examiner alleges that, with respect to the admitted prior art, the illustrated embodiments show an engagement portion below seal 4 that is positioned in the part of the package that is intended for enveloping the packaged product. Applicant respectfully disagrees, since all of the prior art embodiments shown in Figs. 1-4 and 7-10 include layers of flexible material extending beyond the seal 4, which form "flaps" 7. It is these flaps 7 that function as an engagement portion for opening the package, which is accomplished by engaging the flaps 7 with the fingers and pulling in the direction of arrows 5 and 6.

The Examiner also asserts that the seal 4 of the admitted prior art has a convex edge positioned closest to the engagement portion and directed inwardly, since the orientation of the seal 4 area causes the left and right sides of the convex edge to be directed inwardly from the engagement area. Applicant respectfully asserts that all of the containers 1 illustrated in Figs. 3, 4 and 7-10 not only include the flaps 7, but the seal 4 is a convex-shaped

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edge that is directed outwardly and away from the bottom 2 of the container 1, not inwardly.

The package 1 of the present invention is formed into an envelope having upright walls 3, a bottom 2 and a seal 4. Further, the present invention does not include the flaps 7 of the admitted prior art. In addition, the engagement portion is positioned in the part of the package configured to envelop the packaged product. Still further, it is clearly illustrated in the figures according to the admitted prior art that the seal 4 extends toward or "points to" the flaps 7 or top of the package. The present invention, however, includes a seal 4 that extends the width of the package and is directed inwardly and downwardly toward the engagement portion and the bottom 2 of the package. Therefore, a central portion of the edge of the seal 4 is immediately adjacent the engagement portion.

Therefore, the embodiments of Figs. 3, 4 and 7-10 of the admitted prior art neither teach nor suggest a package having an engagement portion positioned in the part of the package configured to envelop the packaged product, as specifically set forth in independent claims 12, 20 and 21 of the present application. Still further, the embodiments of Figs. 3, 4 and 7-10 of the admitted prior art do not teach or suggest a seal extending the width of the package that is directed inwardly and downwardly toward the engagement portion and the bottom of the package, such that the central portion of the edge of the seal is immediately adjacent the engagement portion, as specifically set forth in independent claims 12, 20 and 21 of the present application. Therefore, the embodiments of Figs. 3, 4 and 7-10 of the admitted prior art do not anticipate or obviate the presently-claimed invention. For these reasons, independent claims 12, 20 and 21 are not anticipated by or rendered obvious over Figs. 3, 4 and 7-10 of the admitted prior art.

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In the final Office Action, the Examiner further argues that the Hopkins patent teaches an inwardly-directed convex edge and seal area, as illustrated in Figs. 6 and 7 of the Hopkins patent. Specifically, the Examiner asserts that, below seals 62, 63 and 74 of Figs. 6 and 7, the engagement portion of material is positioned in the part of the package intended to envelop the packaged product. Further, the Examiner indicates that seals 65, 66, 75 and 76 define an inwardly-directed convex edge.

Applicant respectfully disagrees that the Hopkins patent illustrates an engagement portion located or positioned on an area of the package that is intended to envelop the product. It appears that the Examiner believes that the part of the package that is intended to envelop the product may be located on either side of the seal portion of the package of the Hopkins patent. Therefore, referring to Fig. 7 of the Hopkins patent, it appears that it is the Examiner's contention that a product may be placed or otherwise positioned in the upper "flap" areas above the seal 74. Applicant respectfully believes that the flaps or upper areas of the packages of the Hopkins patent are not intended to envelop the product and instead are clearly to serve as engagement portions for opening the package. Therefore, Applicant respectfully asserts that the engagement portion of the package of the Hopkins patent is not and cannot be positioned on the part of the package configured to envelop the packaged product, as specifically set forth in independent claims 12, 20 and 21 of the present application. Further, it is the region 18 of the container 10 of the Hopkins patent, extending beyond the seal 14, that is used to engage and open the container 10. Still further, if it is the secondary seal 65, 66 (of Fig. 6) and 75, 76 (of Fig. 7) that the Examiner considers as directed inwardly toward the engagement portion, and even if it is further assumed that the

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engagement portion is located on the part of the package enveloping the packaged product, these secondary seals do not extend the width of the package, since they are not the primary seal and, when separated, do not provide an access opening.

Therefore, the package of the present invention is wholly distinguishable from the container 10 of the Hopkins patent. It is the seal area 62, 63, 74 of the container 10 in Figs. 6 and 7 of the Hopkins patent that are bonded together and provide an access opening, not secondary seals 65, 66, 75, 76. Therefore, the Hopkins patent does not teach or suggest an engagement portion positioned in the part of the package configured to envelop the packaged product, as specifically set forth in claims 12, 20 and 21 of the present application. In addition, the Hopkins patent does not teach or suggest a seal extending the width of the package where the seal is directed inwardly and downwardly toward the engagement portion and a bottom of the package, such that a central portion of the edge of the seal is immediately adjacent the engagement portion, as specifically set forth in independent claims 12, 20 and 21 of the present application. Therefore, the Hopkins patent does not anticipate or obviate the presently-claimed invention. For the foregoing reasons, independent claims 12, 20 and 21 are not anticipated by the Hopkins patent.

For all the foregoing reasons, reconsideration of the rejection of independent claims 12, 20 and 21 is respectfully requested. Further, claims 13-19 depend either directly or indirectly from and add further limitations to independent claim 12 and are believed to be allowable for the reasons discussed hereinabove in connection with independent claim 12. Reconsideration of the rejections of claims 13-19 is respectfully requested.

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In view of the foregoing amendments and the above remarks, Applicant believes that claims 12-21 are patentable over the cited prior art and in condition for allowance. Reconsideration of the rejections and allowance of all pending claims 12-21 are respectfully requested.

Respectfully submitted,

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